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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**Sergio Antonio Resendiz-Campos, Americo
Sosa-Padilla, Noe Diaz-Sambrano and
Alejandro Ruiz,**

Case No.:

COMPLAINT

Plaintiffs,

v.

**Fair Labor Standards Act (29 U.S.C. §
201 *et seq.*)**

**Alberto Diaz Painting, Inc., an Oregon
corporation; Alberto Diaz-Sambrano,
individually; Plummer Family Homebuilders,
Inc., an Oregon corporation; Benjamin
Plummer, individually; and Robert Plummer,
individually,**

**Oregon Wage and Hour Laws
Washington Wage and Hour Laws
Breach of Contract - Oregon Common
Law**

Defendants.

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. Sergio Antonio Resendiz-Campos, Americo Sosa-Padilla, Noe Diaz-Sambrano and Alejandro Ruiz (collectively, "Plaintiffs") bring this action against Alberto Diaz Painting,

COMPLAINT

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Inc., Alberto Diaz-Sambrano, Plummer Family Homebuilders, Inc., Benjamin Plummer and Robert Plummer (collectively, “Defendants”) under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, for unpaid wages. Specifically, Plaintiffs seek wages due to them under the FLSA, 29 U.S.C. §§ 207 and 216(b), and liquidated damages for failure to pay wages under 29 U.S.C. § 216(b).

2. Plaintiffs also bring this action for unpaid wages and penalty damages under Oregon statutes (O.R.S. §§ 652.140, 652.150, 652.200, 653.025, 653.261 and 653.055).

JURISDICTION

3. Jurisdiction for overtime wage claims exists under the FLSA, 29 U.S.C. § 216(b). Jurisdiction also exists under 28 U.S.C. § 1337 for claims arising under a federal statute regulating commerce.

4. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the Oregon and Washington state claims because the state claims are so related to the federal claims as to form part of the same case or controversy under Article III of the United States Constitution.

PARTIES

5. Sergio Antonio Resendiz-Campos (“Mr. Resendiz”) was employed by Alberto Diaz-Sambrano (“Mr. Alberto Diaz”) and Alberto Diaz Painting, Inc. (“Alberto Diaz Painting”) (collectively, “Diaz Defendants”) between May 21, 2007 and April 23, 2008.

6. Mr. Resendiz was employed by Plummer Family Homebuilders, Inc. (“Plummer Family Homebuilders”), Benjamin Plummer and Robert Plummer (collectively, “Plummer Defendants”) between March 19, 2008 and March 22, 2008.

7. Americo Sosa-Padilla (“Mr. Sosa”) was employed by the Diaz Defendants between October 30, 2007 and December 10, 2007.

8. Mr. Sosa was employed by the Plummer Defendants between October 30, 2007 and November 10, 2007.

9. Noe Diaz-Sambrano (“Mr. Noe Diaz”) was employed by the Diaz Defendants between March 26, 2007 and May 1, 2008.

10. Mr. Noe Diaz was employed by the Plummer Defendants between March 17, 2007 and March 24, 2007.

11. Alejandro Ruiz (“Mr. Ruiz”) was employed by the Diaz Defendants between August 8, 2007 and November 5, 2007.

12. Mr. Ruiz was employed by the Plummer Defendants between November 12, 2007 and November 16, 2007.

13. Alberto Diaz Painting is an Oregon corporation. At all material times Alberto Diaz Painting conducted a painting business in the state of Oregon, including the employment of Plaintiffs.

14. Plummer Family Homebuilders is an Oregon corporation. At all material times Plummer Family Homebuilders conducted a construction business in the state of Oregon including the employment of Plaintiffs.

15. Mr. Alberto Diaz is the owner of Alberto Diaz Painting. At all material times, Mr. Alberto Diaz employed Plaintiffs and managed Alberto Diaz Painting’s employment of Plaintiffs.

16. Mr. Benjamin Plummer is an owner and officer of Plummer Family Homebuilders. At all material times, Mr. Benjamin Plummer employed Plaintiffs and managed Plummer Family Homebuilders' employment of Plaintiffs.

17. Mr. Robert Plummer is an owner and officer of Plummer Family Homebuilders. At all material times, Mr. Robert Plummer employed Plaintiffs and managed Plummer Family Homebuilders' employment of Plaintiffs.

FACTS

18. Defendants employed Plaintiffs during the period March of 2007 through May of 2008.

19. Plaintiffs performed painting work for Defendants in the state of Oregon.

20. Plaintiffs were engaged in interstate commerce and in handling materials in interstate commerce.

21. During their employment, Plaintiffs regularly worked more than forty hours in a workweek.

22. Defendants did not pay overtime wages at a rate one and one-half times the regular hourly rate to Plaintiffs for any workweek they were employed by Defendants.

23. Defendants knew that they were not paying overtime wages to Plaintiffs and did so deliberately and willfully.

24. The Diaz Defendants did not pay Plaintiffs the promised rate for all work performed.

25. Defendants did not pay Plaintiffs the Oregon or federal minimum wage for all work performed.

26. Defendants knew that they were not paying the Oregon or federal minimum wage and did so deliberately and willfully.

27. Plaintiffs have had to retain the services of an attorney to pursue their claims against Defendants.

CLAIMS FOR RELIEF

(First Claim—Violation of FLSA)

28. Under the FLSA, 29 U.S.C. § 201 *et seq.* at § 206, Defendants are required to pay Plaintiffs the federal minimum wage for all hours worked.

29. Under the FLSA, 29 U.S.C. § 201 *et seq.* at § 207, Defendants are required to pay Plaintiffs overtime wages at a rate one and one-half times the regular hourly rate for time worked in excess of forty hours per week.

30. Under 29 U.S.C. § 216(b), Defendants owe Plaintiffs unpaid wages and an amount equal to the unpaid wages as liquidated damages.

31. Plaintiffs are entitled to costs and reasonable attorney fees, in an amount to be determined at trial, pursuant to 29 U.S.C. § 216(b).

(Second Claim—Violation of Oregon Wage and Hour Laws)

32. Oregon Wage and Hour Law O.R.S. § 653.261 and O.A.R. 839-020-0030 require Defendants to pay Plaintiffs time and a half for time worked in excess of forty hours per week.

33. Oregon Wage and Hour Law O.R.S. § 653.025 and O.A.R. 839-020-0010 require Defendants to pay Plaintiffs at least the state minimum wage.

34. Plaintiffs seek relief pursuant to O.R.S. § 653.055, which states that an employer who violates O.R.S. §§ 653.261 or 653.025 is liable for unpaid wages, penalty wages equal to 240 times their hourly wage and reasonable attorney fees.

35. Oregon Wage and Hour Law O.R.S. § 652.140 and O.A.R. 839-001-0420 provide that all wages that have been earned but not paid become due and payable no later than at the next regularly scheduled payday after employment has terminated, or earlier if the employee was discharged or terminated by mutual agreement.

36. Under O.R.S. § 652.140 and O.A.R. 839-001-0420, Defendants owe Plaintiffs unpaid wages.

37. Plaintiffs seek relief pursuant to O.R.S. § 652.150, which states that an employer who violates O.R.S. § 652.140 is liable for unpaid wages, statutory damages equal to 240 times their hourly wage and reasonable attorney fees.

(Third Claim for Relief—Breach of Contract)

38. Oregon common law requires fulfillment of a contract entered into by two willing parties.

39. Plaintiffs are entitled to damages incurred as a result the breach of contract committed by the Diaz Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment as follows:

1. Declare that Defendants violated the Fair Labor Standards Act and applicable Oregon laws by failing to pay minimum and overtime wages as alleged;

2. Award Plaintiffs the amount due as a result of Defendants' failure to pay minimum and overtime wages due under the FLSA, and an equal amount in liquidated damages;

3. Award Plaintiffs the amount due as a result of Defendants' failure to pay Oregon minimum wages, and an additional amount equal to 240 times Plaintiffs' hourly wage;

4. Award Plaintiffs the amount due as a result of Defendants' failure to pay Oregon overtime wages, and an additional amount equal to 240 times Plaintiffs' hourly wage;

5. Award Plaintiffs the amount due as a result of Defendants' failure to pay wages promptly and an additional amount equal to 240 times Plaintiffs' hourly wage;

6. Award Plaintiffs the amount due as a result of the breach of contract by the Diaz Defendants;

7. Award Plaintiffs the cost of maintaining this suit, including their reasonable attorney fees; and

8. Grant such other relief as this Court deems just and proper.

Dated this 5th day of June, 2009.

/s/ Meg Heaton

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Of Attorneys for Plaintiffs